

**Department of Justice
Bureau of Gambling Control**

INITIAL STATEMENT OF REASONS
PROPOSED ADOPTION OF REGULATIONS - *MAJOR LEAGUE SPORTS RAFFLE PROGRAM*

HEARING DATE	None
SUBJECT MATTER OF THE PROPOSED REGULATIONS:	Bureau of Gambling Control, Major League Sports Raffle Program
SECTIONS AFFECTED:	Title 11, sections 2084, 2086, 2088, 2089, 2090, 2092, 2095, 2097 and 2107.

I. GENERAL PURPOSE OF PROPOSED REGULATIONS

INTRODUCTION:

In 2015, the Legislature enacted Penal Code section 320.6, which authorizes 50/50 raffles at major league sports home games by eligible organizations. As authorized, 50 percent of the gross receipts generated from the sale of raffle tickets must be used to benefit or provide support for beneficial or charitable purposes, and the other 50 percent must be paid to the winner, which is determined by a manual draw. Before conducting 50/50 raffles, eligible organizations and manual draw supervisors affiliated with eligible organizations must first register annually with the Department of Justice (Department). (Penal Code, § 320.6, subd. (o)(1)(A).) In addition, before conducting business with an eligible organization, raffle vendors that manufacture or distribute raffle-related products or services must also register annually with the Department. (Penal Code, § 320.6, subd. (o)(2)(A).)

In 2016, the Department adopted emergency regulations implementing the Major League Sports Raffle Program (MLSRP), which were permanently adopted in 2017 (the “2017 Regulations”). (Cal. Code Regs., tit. 11, § 2080 et seq.) In addition to the mandatory statutory event fee, these regulations imposed the following additional fees:

- a \$5,000 annual registration fee for eligible organizations;
- a \$10 annual registration fee for manual draw supervisors; and,
- a \$5,000 annual registration fee for manufacturers and distributors of raffle-related products or services.

In 2018, the Legislature enacted urgency legislation, Assembly Bill 888 (Stats. 2018, c. 575, eff. Sept. 20, 2018), which modified the existing fee schedule for the MLSRP; changed the information required in annual reporting; updated information posting requirements; and, extended the sunset date to January 1, 2024.

In response to AB 888, the Department initiated the emergency rulemaking process in December 2018, modifying the fee structure, implementing new forms and updating annual reporting requirement. On December 31, 2018, the Office of Administrative Law approved the emergency rulemaking. In the weeks since the emergency rulemaking has taken effect, the Department has

registered fourteen eligible organizations, two manufacturers or distributors of raffle-related products or services, and over 400 registered events. Formal rulemaking to make permanent with changes the emergency regulations enacted is now necessary. The Department proposes changes to the text of the emergency regulations; however, all text adopted in the December 2018 emergency rulemaking and the proposed changes are considered new and subject to public comment as part of this formal rulemaking.

PURPOSE:

The proposed action is to make permanent, with changes, the emergency regulation approved on December 31, 2018, by the Office of Administrative Law concerning the Department's Major League Sports Raffle Program. The changes to the emergency regulation are those which were not specifically related to the emergency but are necessary due to changes in statute as a result of the enactment of AB 888.

II. PROBLEM INTENDED TO ADDRESS

The Department implements the charitable MLSRP through its Bureau of Gambling Control (Bureau). (Cal. Code Regs, tit. 11, § 2082.) The Department's ability to carry out the registration, auditing, oversight, and enforcement functions of the program are contingent upon the appropriation of sufficient funds. (Penal Code, § 320.6, subd. (o)(10) and (11)(a); Cal. Code Regs., tit. 11, § 2080.) The Bureau consults with the Department's Indian and Gaming Law Section to administer and enforce the program. The Department received a loan from the General Fund in the amount of \$1,005,000, which must be repaid, to fund the workload costs of the Indian and Gaming Law Section related to the initial implementation of the program. The full costs of administering and enforcing this program were not currently being met within the fee structure as established in the 2017 regulations. As a result of the funding imbalance, the Department has not yet been able to fulfill its oversight and enforcement role.

Of the \$1,005,000 loaned to the Raffle Fund from the General Fund, no more than \$335,000 may be provided annually to the Department. (Pen. Code, § 320.6, subd. (o)(5)(B)(i).) The Department has used the loan as follows: \$298,000, for fiscal year 2016-2017 and \$309,000 for fiscal year 2017-2018. It is anticipated that the Department will use an additional \$335,000 of the loan for the current fiscal year, and that at the end of the current fiscal year, the available loan amount will be \$63,000. Repayment of the loan to the General Fund is required as soon as there is sufficient money in the Raffle Fund to repay the loan with interest, but no later than December 31, 2023. (Pen. Code, § 320.6, subd. (o)(5)(B)(ii) and (iii).)

When the amount of the estimated loan amounts that will be used by the Department (\$942,000) from the Raffle Fund is subtracted from fees collected during the entire duration of the MLSRP (\$590,904) through the end of the current fiscal year, it is clear that the Department must generate additional fees from registrants in the program to both: (1) repay the remaining \$351,096 of the loan; and (2) operate the MLSRP. Due to the unavailability of funding, the Department must permanently adjust the annual registration fees to ensure that fees will fully offset its anticipated reasonable costs to provide required oversight of the MLSRP until at least January 1, 2024.

Other Bureau positions cannot perform MLSRP functions because the funding sources for existing Bureau positions are special funds designated for other purposes (Gambling Control Fund and the Indian Gaming Special Distribution Fund). Lack of program staff will result in continued, immediate and long-term delay in the Department fulfilling its oversight and enforcement responsibilities of the MLSRP.

Recognizing that existing annual fees were insufficient to cover the Department's costs, effective September 20, 2018, the Legislature amended Penal Code section 320.6 by doubling the discretionary minimum registration fee for eligible organizations and raffle vendors from \$5,000 to \$10,000. (Penal Code, § 320.6, subd. (o)(1)(B)(i), (o)(2)(B).) The Legislature also increased the discretionary minimum registration fee for manual draw supervisors from \$10 to \$20, and the mandatory raffle event fee from \$100 to \$200. (Penal Code, § 320.6, subd. (o)(4)(B) and (o)(1)(B)(ii).)

Compounding the program's funding imbalance under the current fee structure, the recent amendments to Penal Code 320.6 in 2018 with the enactment of AB 888 invalidate the fee structure that was codified in the 2017 Regulation by imposing new discretionary minimum fees. Even though the statute has increased the minimum fees from \$5,000 to \$10,000, these amounts do not cover the Department's costs to administer and enforce this program. While the Department has authority to set registration fees higher than the minimum amount to fully offset its costs to administer and enforce the charitable MLSRP, it does not have authority to set registration fees lower than the new minimum fees set by AB 888. Because the registration fees in the 2017 Regulations were below the minimum fees set by AB 888, they are therefore invalid, and necessitate a formal rulemaking to make permanent the new fee amounts established in the emergency rulemaking.

The Department seeks to adjust the fee structure and make permanent the emergency regulations made effective on December 31, 2018, to conform the fee structure to AB 888, to create a fiscally sound program where revenues more closely align with expenditures, to fully offset the Department's costs not just to administer the program, but to enforce the requirements of the program, and to avoid any disruption in the registration process for eligible organizations that wish to hold raffles benefitting their local communities beginning in January 2019. However, in the event that revenues received from fees collected pursuant to statute and regulation are insufficient to fully offset the Department's costs to implement the MLSRP, the Department may have to address staffing levels, adjust fees, or seek other funding sources.

III. ECONOMIC IMPACT ASSESSMENT (EIA)

IMPACT ON JOBS/NEW BUSINESSES

The Department concludes that it is unlikely the proposed regulations will affect (1) the creation or elimination of permanent jobs within California; (2) the creation of new businesses or the elimination of existing businesses within California; (3) the expansion of businesses currently doing business within California. This assessment is based on the limited scope of organizations the statute envisioned as being able to participate in the MLSRP, coupled with the fee structure provided in the enabling statute, and, the authority granted to the Department to increase fees in order to cover its reasonable costs related to the administration of the MLSRP.

The MLSRP provides millions of dollars to the California economy through the distribution of revenues generated for nonprofits and corresponding amounts to raffle winners. The Department received numerous comments from nonprofit organizations who have received funds from eligible organizations participating in the MLSRP concerned that the revenues they rely heavily upon from the eligible organizations in the operation and support of charitable activities in California may be in jeopardy if the MLSRP were to cease to operate.

HEALTH AND WELFARE OF CALIFORNIA RESIDENTS:

The Department has determined that the proposed action will protect the health, safety, and general welfare of California residents by providing a program for which eligible organizations can generate funds through the operation of MLSRP raffles as well as the staffing necessary to ensure the integrity of the program.

WORKER SAFETY:

The Department has determined that the proposed action will not affect worker safety because it has nothing to do with working conditions or worker safety issues.

STATE'S ENVIRONMENT:

The Department has determined that the proposed action will not affect the State's environment because it has nothing to do with environmental issues.

IV. TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS

The Department has relied on reported program information by MLSRP participants.

V. REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.

No reasonable alternative to the regulations would be more effective in carrying out the purpose for which this action is proposed, would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

No reasonable alternative has been identified and brought to the attention of the Department or otherwise considered by the Department. Alternatives suggested by the regulated community include imposing fees below the minimums identified in the enabling statute. As discussed above, the reasonable costs incurred by the Department for the administration and oversight of the MLSRP must be covered and are not absorbable within existing appropriations to the Department.

VI. MANDATES OR PRESCRIPTIVE STANDARDS

The proposed regulation does not impose the use of specific technologies or equipment.

VII. EVIDENCE SUPPORTING DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS.

The Department has made a determination that the proposed regulatory action would have no significant statewide adverse impact directly affecting businesses, including the ability of

California businesses to compete with businesses in other states. This determination is based on the fact that the enabling statute is limited in scope to those events registered at home games of applicable sporting events located specifically in California. The eligible organizations who can participate in the MLSRP are nonprofit organizations, not in themselves, businesses.

VIII. PROPOSED REGULATIONS

Penal Code section 320.6 requires the Department to carry out important and costly oversight functions, including investigation and prosecution of all suspected violations of section 320.6 and its implementing regulations. The MLSRP is anticipated to continue until at least January 1, 2024.

The Department's minimum cost estimates in the table below are based on employing the persons provided to fulfill its statutorily mandated oversight functions for the authorized duration of the MLSRP¹.

	MLSRP Costs					
Classification	2019-20	2020-21	2021-22	2022-23	2023-24	Total
Investigative Auditor 1	\$153,879	\$142,196	\$142,196	\$142,196	\$73,098	\$653,566
Investigative Auditor 2	\$153,879	\$142,196	\$142,196	\$142,196	\$73,098	\$653,566
Investigative Auditor 3	\$153,879	\$142,196	\$142,196	\$142,196	\$73,098	\$653,566
Associate Governmental Program Analyst	\$148,616	\$136,933	\$136,933	\$136,933	\$70,467	\$ 629,882
Special Agent	\$299,668	\$240,548	\$240,548	\$240,548	\$133,763	\$1,155,075
Deputy Attorney General	\$296,128	\$288,071	\$288,071	\$288,071	\$157,199	\$1,317,540
Legal Secretary	\$70,015	\$64,939	\$64,939	\$64,939	\$33,749	\$298,581
Information Technology Specialist (Overtime Only)	\$2,090	\$2,090	\$2,090	\$2,090	\$1,045	\$9,405
Total	\$1,278,155	\$1,159,170	\$1,159,170	\$1,159,170	\$615,517	\$5,371,182
Request	\$1,278,000	\$1,160,000	\$1,160,000	\$1,160,000	\$616,000	\$5,374,000

Penal Code section 320.6 contains three types of annual registration fees. To cover the reasonable costs of administering and enforcing section 320.6, the Department may require minimum annual registration fees from: (1) an eligible organization; (2) a manufacturer or distributor of raffle-related products or services; or (3) a person affiliated with an eligible organization who conducts the manual draw. A fourth source of fees is the individual raffle

¹ Because the MLSRP sunsets on January 1, 2024, the fiscal year estimates for 2023-2024 cover only six months.

event fees, which are now set at \$200 by statute. Under the new fee schedule below, the Department seeks to permanently collect the following annual registration and raffle event fees to generate \$1,334,000 per year to cover total cost estimates, divided over the 4.5 years of the program.

New Fee Schedule		
2018 Participants - number ²	FEE	EST. REV
Eligible Organizations - 20	\$14,400	\$288,000
Manufacturers/Distributors - 2	\$432,000	\$864,000
Manual Drawers – approximately 79	\$20	\$2,000
Raffle Events - 900	\$200	\$180,000
		\$1,334,000

The majority of registrants in the MLSRP are eligible nonprofit organizations established by or affiliated with major league sports teams or associations and manual draw supervisors, as provided in Penal Code section 320.6. The eligible organizations are nonprofit entities conducting fundraising activities for other nonprofit organizations. The manual draw supervisors are either volunteers or mostly part-time employees of the nonprofit organizations who conduct the raffles. The eligible organizations are prohibited by Penal Code section 320.6 from using any proceeds from the sale of raffle tickets to cover costs related to the conduct or operation of raffles, requiring the organization to use other revenue sources to cover the registration fees required to participate in the MLSRP. There are currently no California-based entities registered to participate as manufacturers or distributors of raffle-related products or services in the MLSRP. The two registrants in this category are both foreign, for-profit corporations providing goods and services to eligible organizations in the MLSRP.

Because eligible organizations and persons affiliated with those organizations may not be in a position to immediately pay significantly higher costs to participate in the MLSRP, the Department has determined that approximately 65 percent of the initial costs of the MLSRP should be paid by the two manufacturers or distributors of raffle-related products or services that currently participate in the program and 22 percent of the costs should be paid by the eligible organizations, and the remaining 13 percent from manual draw supervisors and event registrations. Therefore, the Department finds it reasonable to collect annual registration fees totaling \$14,400 from eligible organizations, and \$432,000 from manufacturers or distributors of raffle-related products or services. The Department has also determined that increasing fees for persons who conduct the manual draws, from \$10 to \$20, the minimum amount specified in Penal Code section 320.6, will help offset the costs incurred by the Department.

The Department recognizes that the fee amounts are higher than the minimum amounts provided in statute; however, the costs related to the administration, compliance, audit, and enforcement activities are not absorbable within existing funding, nor is the workload within existing programs. Without revenue from registration fees, the Department's Bureau of Gambling Control will be unable to fund the positions necessary to administer the program by reviewing

² These numbers are based on the number of registrants and registered raffle events in 2018.

and approving registration applications. Other Bureau positions cannot perform this function because the funding source for those positions are special funds designated for other purposes. Lack of program staff will result in delays in the registration process and cause eligible organizations and nonprofit organizations that receive funds from raffles to lose out on millions of dollars in donations raised from the sale of raffle tickets. Lack of program staff to conduct appropriate oversight may affect the integrity of raffle events.

This proposed action makes the following specific changes within Article 8, Chapter 1, Division 3, Title 11 of the California Code of Regulations:

§ 2084. Forms.

Existing section 2084 identifies and incorporates by reference the various forms the Department uses to implement the program. It is necessary to amend this section to incorporate updated versions of the forms revised to implement the new fee structure and to make the forms consistent with the statute as amended by AB 888.

Subdivision (a) incorporates by reference the form entitled "Major League Sports Raffle Eligible Organization Annual Registration Form (BGC 200; Rev. 10/2018)" which is used for an applicant to request registration as an eligible organization. It is necessary to revise this form from the original version to update the increased fee amount from \$5,000 to \$14,400. This form also modifies the date from "10/2017" to "10/2018".

Subdivision (b) incorporates by reference the form entitled "Major League Sports Raffle Manufacturer and Distributor of Products or Services Annual Registration Form (BGC 201; Rev. 10/2018)" which is used for the registration of a manufacturer or distributor of raffle-related products or services. It is necessary to revise form from the original version to update the increased fee amount from \$5,000 to \$432,000. This form also modifies the date from "10/2017" to "10/2018".

Subdivision (c) incorporates by reference the form entitled "Major League Sports Raffle Manual Draw Supervisor Annual Registration Form (BGC 202; Rev. 10/2018)" which is used for an eligible organization to apply for its employee(s) or volunteer(s) for registration as an affiliated person. It is necessary to revise this from the original version to update the increased fee amount from \$10 to \$20. This form also modifies the date from "10/2017" to "10/2018".

Subdivision (d) incorporates by reference the form entitled "Major League Sports Raffle Eligible Organization Raffle Report (BGC 203; Rev. 10/2018)" which is used for an eligible organization to document the financial information requested pursuant to statute. It is necessary to revise this from the original version to reflect the additional reporting requirements imposed on an eligible organization's raffle activities for an annual year or season, whichever the eligible organization opts to outline in its report.

Subdivision (e) incorporates by reference the form entitled "Major League Sports Raffle Eligible Organization Registered Event Registration Form (BGC 204; Rev. 10/2018)" which is used for an eligible organization to register a raffle. It is necessary to revise this from the original version

to update the increased mandatory fee amount from \$100 to \$200, as provided in Penal Code section 320.6 (o)(1)(B)(ii). This form also modifies the date from "10/2017" to "10/2018".

§ 2086. Eligible Organization Registration.

Existing section 2086 describes how an eligible organization can register with the Department. It is necessary to amend this section to reference an updated version of the registration form in subdivision (c)(1) and to increase the registration fee from an invalid fee of \$5,000 to a new fee of \$14,400 in subdivision (c)(2). This form referenced in this section is also updated to reflect changes of the date from "10/2017" to "10/2018".

§ 2088. Fiduciary of Eligible Organization – Duties.

Existing section 2088 identifies responsibilities of fiduciaries of eligible organizations. It is necessary to amend this section to reference an updated version of the registration form.

In addition, Penal Code section 320.6 subdivision (o)(12), as amended by AB 888, now requires an eligible organization, once registered, to post specific information on either its Internet Web site or the affiliated sport team's Internet Web site for each raffle. It is necessary to amend this section to add subdivision (m) concerning the posting of raffle information required pursuant to Penal Code section 320.6 subdivision (o)(12).

§ 2089. Raffle Registration; Registered Event.

Existing section 2089 describes how to register a raffle event. It is necessary to amend this section to reference in subdivision (d)(1) an updated version of the registration form and increase the event registration fee from an invalid fee of \$100 to the new minimum mandatory statutory fee of \$200 in subdivision (d)(2). This form referenced in this section is also updated to reflect changes of the date from "10/2017" to "10/2018".

§ 2090. Raffle Registration; Registered event; Post-Season Play.

Existing section 2090 describes how to register a raffle event for post-season play. It is necessary to amend this section to reference an updated version of the registration form in subdivision (a) and increase the event registration fee from an invalid fee of \$100 to the new mandatory statutory fee of \$200 in subdivision (b). This form referenced in this section is also updated to reflect changes of the date from "10/2017" to "10/2018".

§ 2092. Manual Draw Supervisor Registration.

Existing section 2092 describes how a manual draw supervisor affiliated with an eligible organization can register with the Department. It is necessary to amend this section to reference an updated version of the registration form in subdivision (a)(3) and increase the registration fee from an invalid fee of \$10 to a new fee of \$20 in subdivision (a)(4). This form referenced in this section is also updated to reflect changes of the date from "10/2017" to "10/2018".

§ 2095. Manufacturers and Distributors of Raffle-Related Products and/or Services; Registration.

Existing section 2095 describes how raffle vendors can register with the Department. It is necessary to amend this section to reference an updated version of the registration form in subdivision (b)(1) and increase the registration fee from an invalid fee of \$5,000 to a new fee of

\$432,000 in subdivision (b)(2). This form referenced in this section is also updated to reflect changes of the date from "10/2017" to "10/2018".

§ 2097. Winner Determination.

Existing section 2097 describes the method for an eligible organization to determine the winner of a manual draw and related requirements. Penal Code section 320.6 subdivision (o)(12), as amended by AB 888, now requires an eligible organization to post specific information on either its Internet Web site or the affiliated sport team's Internet Web site for each raffle. It is necessary to amend this section to incorporate this new requirement by adding subdivision (n) concerning the posting of raffle information required pursuant to Penal Code section 320.6 subdivision (o)(12).

§ 2107 Eligible Organization – Annual Financial Report.

Existing section 2107 requires every eligible organization to submit an annual report to the Department, as required by the enabling statute, on a specified form. It is necessary to amend this section to reference an updated version of the form and outline the specific information required pursuant to Penal Code section 320.6 subdivision (o)(13).

Forms Incorporated by Reference

The Department also proposes to amend the following forms, which are incorporated by reference in the regulations to implement the new fee structure and make the forms consistent with statute as amended by AB 888:

- Major League Sports Raffle Eligible Organization Annual Registration Form (BGC 200; Rev. 10/2018)
- Major League Sports Raffle Manufacturer and Distributor of Products or Services Annual Registration Form (BGC 201; Rev. 10/2018)
- Major League Sports Raffle Manual Draw Supervisor Annual Registration Form (BGC 202; Rev. 10/2018)
- Major League Sports Raffle Eligible Organization Raffle Report (BGC 203; Rev. 10/2018)
- Major League Sports Raffle Eligible Organization Registered Event Registration Form (BGC 204; Rev. 10/2018)